



महाराष्ट्र शासन राजपत्र

असाधारण भाग पाच-अ

वर्ष ४, अंक ५(३)]

बुधवार, मार्च १४, २०१८/फाल्गुन २३, शके १९३९

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असाधारण क्रमांक १०

प्राधिकृत प्रकाशन

महाराष्ट्र विधानसभेत व महाराष्ट्र विधानपरिषदेत सादर केलेली विधेयके (इंग्रजी अनुवाद)

MAHARASHTRA LEGISLATURE SECRETARIAT

The following Bill was introduced in the Maharashtra Legislative Assembly on the 14th March 2018 is published under Rule 117 of the Maharashtra Legislative Assembly Rules :—

L. A. BILL No. X OF 2018.

A BILL

to provide for the establishment of the Maharashtra Infrastructure Development Enabling Authority, to regulate the process of submission and evaluation of unsolicited proposals, to promote and facilitate infrastructure projects in the State of Maharashtra including through Public Private Partnership and matters connected therewith or incidental thereto.

WHEREAS, both Houses of the State Legislature were not in session ;

AND WHEREAS, the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law, for the establishment of the Maharashtra Infrastructure Development Enabling Authority, to regulate the process of submission and evaluation of unsolicited proposals, to promote and facilitate infrastructure projects in the State of Maharashtra including through Public Private Partnership; and matters connected therewith or incidental thereto ; and, therefore, promulgated the Maharashtra Infrastructure Development Enabling Authority Ordinance, 2018, on the 23rd February 2018 ;

Mah.
Ord. VII
of 2018.

AND WHEREAS, it is expedient to replace the said Ordinance by an Act of the State Legislature ; it is hereby enacted in the Sixty-ninth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Maharashtra Infrastructure Development Enabling Authority Act, 2018.

(2) It shall be deemed to have come into force on the 23rd February 2018.

2. In this Act, unless the context otherwise requires,—

(1) “Authority” means the Maharashtra Infrastructure Development Enabling Authority constituted under sub-section (1) section 3 ;

(2) “Designated Officer” means the officer of the State Government appointed under sub-section (2) of section 5 ;

(3) “Government” or “State Government” means the Government of Maharashtra;

(4) “Government Agency” means any instrumentality of the State Government;

(5) “Government Authority” means the Authorities established by the State Government;

(6) “Infrastructure Project” or “Project” means a Project in the Infrastructure Sector, for any development, re-development or restructuring of an existing Infrastructure Projects, or any under construction Infrastructure Projects, including those have been awarded prior to the commencement of the Act by any Government Authority or Government Agency or Local Authority or Government Company; or development, operation and maintenance ; or operation and maintenance of any infrastructure facility in the Infrastructure Sector, for the purposes of creation of infrastructure asset, or delivery of public services and shall include a facility of similar nature and substantial expansion thereof;

(7) “Infrastructure Sector” means the Infrastructure Sectors prescribed in rules;

(8) “innovative financing” means the financing at the rate below Repo Rate declared by the Reserved Bank of India, from time to time;

(9) “Local Authority”—

(i) in relation to the *Zilla Parishad* means the *Zilla Parishad* constituted under the Maharashtra Zilla Parishads and Panchayats Samitis Act, 1961;

Mah. V
of 1962.

(ii) in relation to the Municipal Corporation means the Municipal Corporations constituted under the Mumbai Municipal Corporation Act or, as the case may be, the Maharashtra Municipal Corporations Act ;

III of 1888.
LIX of
1949.

(iii) in relation to the Municipal Council, *Nagar Panchayat* or Industrial Township means the Municipal Council, *Nagar Panchayat* or Industrial Township, as the case may be, constituted under the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965; or

Mah. XL
of 1965.

(iv) any other authority treated as Local Authority under any other law for the time being in force;

(10) "Maharashtra Infrastructure Projects Policy" means the policy declared by the State Government, from time to time, for promotion and development of Infrastructure Projects, including Public Private Partnerships in Infrastructure Sectors;

(11) "Original Project Proponent" means a person who has submitted the Unsolicited Proposal to the Authority and declared as Original Project Proponent under sub-section (3) of section 8;

(12) "Person" includes any Private Sector Participant or Public Sector Participant, company or body corporate or association or body of individuals, whether incorporated or not;

(13) "prescribed" means prescribed by rules made under the Act;

(14) "Private Sector Participant" means any Person other than a Public Sector Participant;

(15) "Project Entrepreneur" means the Person to whom the project has been assigned after final bid and declared as Project Entrepreneur by the Authority under sub-section (3) of section 14;

(16) "Public Private Partnerships" means a mode of procurement of Infrastructure Projects through a combination of public and private participation;

(17) "Public Sector Participant" means and includes,—

(a) Central Government, State Government, Government Agency, Government Authority, Government Company or Local Authority; or

(b) any joint venture by any Public Sector Participant with Private Sector Participant;

(18) "regulations" means regulations made by the Authority under the Act;

(19) "rules" means rules made under the Act;

(20) "Transaction Advisor" means a person appointed by the Government Authority, Government Agency or Local Authority under sub-section (1) of section 18;

(21) "Unsolicited Proposals" means the proposals in Infrastructure Sectors, for promotion and development of Infrastructure Projects as per the Maharashtra Infrastructure Projects Policy of the Government with innovative ideas, new concepts, new or modern technologies, submitted by any Person under sub-section (1) of section 6.

CHAPTER II

ESTABLISHMENT AND COMPOSITION OF AUTHORITY.

3. (1) As soon as may be, after the commencement of the Act, the State Government shall, by notification in the *Official Gazette*, establish a Authority to be called the Maharashtra Infrastructure Development Enabling Authority, to exercise the powers conferred on it and perform the functions assigned to it under the Act.

Establishment of Maharashtra Infrastructure Development Enabling Authority.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of the Act, to acquire, hold and dispose of property, both moveable and immoveable, to do all things incidental and necessary for the purposes of the Act, and to contract, and shall, by name sue or be sued.

(3) The head office of the Authority shall be at such place as the State Government may specify.

Composition
of Authority.

4. (1) The Authority shall consist of the Chief Secretary and Additional Chief Secretary, Principal Secretary or Secretary, as the case may be, of the Departments of the State Government, as may be specified by the Government, by notification in the *Official Gazette*, from time to time.

(2) The Government may appoint such other expert Members in such field as may be prescribed.

(3) The Chief Secretary shall be the Chairperson and Secretaries of the Departments shall be the *ex officio* Members of the Authority.

(4) The Secretary of the concerned Department, to which the project pertains shall act as the Member-Secretary of the Authority.

Powers and
functions of
Authority.

5. (1) The Authority shall exercise the following powers and perform the following functions, namely :—

(a) to receive all proposals and certify whether the project qualifies to be the Infrastructure Project, keeping in mind the overall objectives of the State Government and the provisions of the Maharashtra Infrastructure Projects Policy;

(b) to receive, consider and process the proposals for development of the Infrastructure Projects and to recognize and grant the status of 'Original Project Proponent' or 'Project Entrepreneur', as the case may be;

(c) to facilitate co-ordination between the Government Authority, Government Agency, Local Authority or the concerned Department of the State Government, and the Original Project Proponent or Project Entrepreneur, as the case may be;

(d) to promote the competitive bidding of the Infrastructure Projects;

(e) to select Project Entrepreneur for the implementation of Infrastructure Projects by making appropriate recommendations to the Government Authority, Government Agency, Local Authority or the State Government;

(f) to identify and leverage inter-sectorial or inter-project linkages;

(g) to recommend and approve standard form of documents relating to the Infrastructure Projects;

(h) to identify and encourage use of new concepts, new technologies, intellectual property rights in the Infrastructure Projects;

(i) to resolve issues relating to the approvals of the Infrastructure Projects;

(j) to recommend time limit for approval of Infrastructure Projects;

(k) to periodically review the status of the Infrastructure Projects;

(l) to approve sectorial policies and model contract principles;

(m) to discharge such other functions as may be prescribed.

(2) The Authority may appoint officers of the Government as the Designated Officers for the purposes of implementing the provisions of the Act.

(3) The Authority may in respect of the specific Infrastructure Project, delegate its functions to the concerned Department of the Government or Government Authority, the Government Agency or the Local Authority, as the case may be, in such manner as may be prescribed.

(4) The Authority shall advise the State Government on all or any of the following matters, namely :—

(a) formulation of the Maharashtra Infrastructure Projects Policy;

(b) promotion and use of new concepts, new ideas, innovation, efficiency and economy in harnessing the proposals, awarding contracts and overall development of Infrastructure Projects in the State;

(c) promotion of investment in the Public Private Partnerships;

(d) any other matter referred to the Authority by the State Government.

(5) The Authority shall ensure transparency while exercising its powers and discharging its functions.

CHAPTER III

INFRASTRUCTURE PROJECTS DELIVERY PROCESS

6. (1) Any Person desirous of developing any Infrastructure Project in the Infrastructure Sectors, shall submit the proposal to the Authority in such form, in such manner, with such documents and with such details along with such fee as may be prescribed.

Procedure for Infrastructure Projects delivery.

(2) On receipt of the proposal under sub-section (1), the Authority shall, on the basis of the information furnished to it, ascertain whether such proposal is, *prima facie*, a Unsolicited Proposal and qualifies to certify as the Infrastructure Project specified in the rules and is in consonance with the overall objectives of the State Government and to the provisions of the Maharashtra Infrastructure Projects Policy.

(3) The Authority shall not qualify such proposal as Infrastructure Project, if such proposal,—

(a) contravenes any existing laws;

(b) results in the creation of a monopoly;

(c) is less than the value of the Infrastructure Project as prescribed ;

(d) is out of the Infrastructure Sectors or sub-sectors as prescribed ;

(e) requires viability gap funding ; or

(f) does not involve use of modern technology, or new concept or innovative financing.

(4) If the Authority is satisfied that the proposal is in consonance with the overall objectives of the State Government and the provisions of the Maharashtra Infrastructure Projects Policy, the Authority may grant a Certificate to the Person in the prescribed format. If the proposal is not approved, the Authority shall communicate its decision to such Person with reasons.

(5) If the Authority is satisfied that the proposal submitted by the Person under sub-section (1) is adequate to declare as the 'Original Project Proponent', the Authority may, with the prior approval of the Government, declare such Person as the 'Original Project Proponent' under clause (b) of sub-section (3) of section 8, for such Infrastructure Project.

(6) The Authority shall take the decision within such period as may be prescribed.

(7) When the Certificate is granted under sub-section (4), the Authority shall seek further information as may be prescribed, pertaining to such proposal from such Person. Such Person shall submit the information online to the Authority in such manner and within such period as may be prescribed.

Grounds of
rejection of
proposal.

7. The Authority may reject the proposal if,—
 - (i) such proposal does not fulfil the eligibility criteria provided under section 13; or
 - (ii) such Person fails to furnish the appropriate information or documents or the clarifications sought by the Authority, within the time communicated to it; or
 - (iii) the information or documents submitted by such Person are not in accordance with the prescribed Forms; or
 - (iv) the contents or information or documents submitted are incomplete or deficient or found to be false; or
 - (v) the Person has failed to make payment of the fees in the manner as may be prescribed; or
 - (vi) any other grounds as may be prescribed.

Declaration
of Original
Project
Proponent.

8. (1) The Authority shall within prescribed period, from the date of receipt of the information sought under sub-section (7) of section 6, ascertain as to whether the proposal submitted is an Unsolicited Proposal or not and as per the Maharashtra Infrastructure Projects Policy. The Authority shall while ascertaining the said proposal consider the following parameters :—

- (a) whether such proposal addresses any public need;
- (b) whether there is any on-going process (Public Private Partnership or otherwise) that is addressing the same public need;
- (c) whether such proposal envisages substantial new technology or innovation or contains proprietary intellectual property rights or innovative financing or financial structuring for Infrastructure Project of a value not less than the value prescribed by the State Government, from time to time, in respect of the Infrastructure Project; which in turn,—
 - (i) enables reduction of project cost; or
 - (ii) reduces project completion time; or
 - (iii) enhances the quality of infrastructure; or
 - (iv) substantially adds value in respect of incremental, emergent or revolutionary changes in products, services and processes; or
 - (v) substantially reduces financial burden on the State Government or Government Authority or Government Agency or Local Authority.

(2) The Authority shall also verify whether the proposal falls within the purview of any Government Authority or Government Agency or Local Authority.

(3) If the Authority is satisfied that,—

(a) the proposal is as per the provisions of the Act and the rules made thereunder and as per the Maharashtra Infrastructure Projects Policy; and

(b) the proposal submitted by the Person under sub-section (1) of section 6, is adequate to declare such Person as the 'Original Project Proponent',

the Authority may, with the approval of the Government, declare such Person as an 'Original Project Proponent' for such Infrastructure Project.

(4) In the event, when the Authority decides that the proposal is not,—

- (i) an Unsolicited Proposal;
- (ii) as per the Maharashtra Infrastructure Projects Policy ; and
- (iii) in accordance with the rules made under the Act,

the Authority shall communicate its decision to such Person alongwith reasons thereof.

(5) The declaration made by the Authority under sub-section (3), as the Original Project Proponent of the Infrastructure Project shall be valid for a period of one year.

9. (1) If the Original Project Proponent agrees to the terms and conditions for such Infrastructure Project, the Original Project Proponent shall enter into an Agreement in such manner as may be prescribed which *inter alia*, shall determine the obligations of the Original Project Proponent, representations and penalties, liquidated damages, liability, nature of concessions and benefits to be granted, etc. to the Original Project Proponent.

Rights of
Original
Project
Proponent.

(2) The nature of concessions and benefits to be granted to the Original Project Proponent shall be such as may be prescribed.

10. (1) The Authority shall direct the Original Project Proponent to submit such Detailed Project Report (DPR), and other details within such period as may be prescribed.

Submission
of details of
Project.

(2) If the Original Project Proponent fails to submit the details of Project within the prescribed period, the Original Project Proponent will have no right over the said Project.

11. (1) The Authority shall, with the approval of the Government, publish the information about the provisional declaration of the Original Project Proponent for such Infrastructure Project, on the website designated by the Authority and also simultaneously in the newspapers (one in English and one in Marathi) having circulation in the area, for calling objections from the affected persons, in the manner prescribed.

Publication of
provisional
declaration of
Project.

(2) If objections are received from the affected persons, the Authority shall hear such objections in such manner as may be prescribed and shall take the final decision on the said Project.

12. (1) The Authority shall direct the concerned Department to call the bid of the approved Project.

Competitive
bids.

(2) The procedure of the bid, notice period, technical aspects and the terms and conditions for approval of such Project shall be such as may be prescribed.

13. (1) The eligibility criteria for submission of proposal by any Person under sub-section (1) of section 6 or competitive bidder for the Project shall be such as may be prescribed.

Eligibility
criteria.

(2) The Person who fulfils the criteria specified in sub-section (1) shall be eligible to submit the proposal or eligible for the bid of the Project.

14. (1) If in the bid,—

Assignment of
Project.

(a) the proposal of the Original Project Proponent is in deviation of 10 per cent. or more, compared to the other competitive bids received, the Authority shall grant the Project to the best competitive bidder and thereupon the Original Project Proponent will lose its status as Original Project Proponent of the said Project.

(b) If the proposal of the Original Project Proponent has deviation of less than 10 per cent. compared to the other bidders, the Authority shall give opportunity to the Original Project Proponent to match his proposal with the proposal selected in bid.

(2) If the Project is not assigned to the Original Project Proponent, he shall be entitled to reimbursement of the cost of the Detailed Project Report as prescribed:

Provided that, the Original Project Proponent shall be entitled to reimbursement of the cost of the Detailed Project Report only if, the Project is implemented:

Provided further that, the Original Project Proponent shall not be entitled to reimburse the cost of the Detailed Project Report, if he unilaterally withdraws the proposal.

(3) The Person to whom the Project has been assigned, the Authority shall, with the approval of the Government, declare such Person as the Project Entrepreneur of the Project.

(4) The procedural details of assignment of the Project to the Project Entrepreneur shall be such as may be prescribed.

Agreement with Project Entrepreneur. **15.** (1) If the Authority and the Project Entrepreneur agrees to the terms and conditions for such Infrastructure Project, the concerned Government Authority or Government Agency or Local Authority may enter into Concession Agreement with the Project Entrepreneur as prescribed which *inter alia*, shall determine the obligations of the Project Entrepreneur, representations and warranties, penalties, liquidated damages, liabilities, nature of concession and benefits to be granted, etc.

(2) It shall be binding on the Project Entrepreneur to complete the Project within the period as per the agreement.

Nature of Concession Agreement. **16.** (1) The Authority may prescribe the model Concession Agreement for the purposes of the Act.

(2) The following Concession Agreement with their variations and combinations may be made,—

- (a) design-build-operate-and-transfer ; or
- (b) design-build-own-operate-and-transfer ; or
- (c) design-build-own-and-operate ; or
- (d) develop-operate-and-transfer ; or
- (e) any other Concession Agreement as may be prescribed.

(3) The details of the Concession Agreement specified in sub-section (1) shall be as prescribed in the regulations.

Implementation of Project. **17.** (1) The concerned Government Authority or Government Agency or Local Authority, identified by the Authority shall be responsible for implementation of the Project either on its own or through any agency.

(2) The Authority shall oversee that the actions carried out by such Government Authority or Government Agency or Local Authority are transparent and cause such Government Authority or Government Agency or Local Authority, report to the Authority in the manner as may be prescribed.

18. (1) The concerned Government Authority or Government Agency or Local Authority may appoint a Transaction Advisor as per the requirements of the Project. Appointment of Transaction Advisor.

(2) The functions and duties of the Transaction Advisor shall be such as may be prescribed.

CHAPTER IV

MISCELLANEOUS

19. (1) The Authority shall provide Single Window Clearance for Single Window administering the proposals in relation to the Infrastructure Project under Clearance. the Act.

(2) The procedural details of the Single Window Clearance shall be such as may be prescribed.

(3) The Authority shall from time to time, accept all documents, proposals and applications under the Act through online mode designated by the Authority or designated by the State Government for this purpose and any such document, proposal or application so uploaded shall constitute a valid submission for the purposes of the Act.

(4) The Government and the Authority shall promote digital system and e-governance in respect of all matters of the Act.

20. The provisions of the Information Technology Act, 2000 shall apply to the information submitted by any Person or exchanged with any Person in respect of any matters relating to the Act. Applicability of Information Technology Act, 2000.

21. (1) The Authority or Government Authority or Government Agency or Local Authority shall ensure transparency in their functioning under the Act. Transparency.

(2) Any Person while submitting the proposal to the Authority under sub-section (1) of section 6 of the Act shall enter into integrity pact with the Authority.

(3) The details of the integrity pact shall be such as may be prescribed.

22. The State Government may, by notification in the *Official Gazette*, direct that any power exercisable by the State Government under this Act (except the power to make rules under section 24) shall be exercisable by an officer of the State Government, subject to such terms as may be specified in such notification. Delegation of powers.

23. The provisions of this Act or the rules made thereunder shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. Act to have overriding effect.

24. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of the Act. Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the *Official Gazette*, the rule shall, from the date of publication of such decision in the *Official Gazette*, have effect only in such modified form or be of no effect, as the case

may be ; so however that, any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Power of Authority to make regulations. **25.** (1) The Authority may, with previous sanction of the Government, by notification in the *Official Gazette*, make regulations consistent with the Act, generally to carry out the purposes of the Act.

(2) The Authority shall make the regulations for the following purposes,-

- (a) the procedure to be followed by the Authority;
- (b) provide the standard forms of agreements and documents;
- (c) direction to be issued to the concerned Government Authority or Government Agency or Local Authority;
- (d) any other matters as may be prescribed.

Protection of action taken in good faith. **26.** No suit, prosecution or other legal proceeding shall lie against the Government, Government Authority or Government Agency or Local Authority or, any officer or employee of the Government, Government Authority, Government Agency or Local Authority, for anything done or purported to have been done in good faith, in pursuance of the provisions of this Act or rules or regulations made thereunder.

Power to remove difficulties. **27.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty :

Provided that, no such order shall be made after expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

Repeal of Mah. Ord. VII of 2018 and saving. **28.** (1) The Maharashtra Infrastructure Development Enabling Authority Ordinance, 2018, is hereby repealed.

Mah.
Ord.
VII of
2018.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Considering the limitations on development of Infrastructure Projects through Government funding, the Government of Maharashtra *vide* Government Resolution, dated the 6th November 1996 has set up a Cabinet Committee for promoting private participation in the State's Infrastructure Projects. The said Cabinet Committee has played enabling and decision making role in respect of many projects.

2. Currently various Departments of State, State Undertakings and Government Authorities act as a Project Proponents. The Infrastructure Projects are selected on the basis of demand from public representatives and studies commissioned by the respective Departments, Public Undertakings and Local Authorities. While giving impetus to the implementation of the Infrastructure Projects, it has become necessary to explore all possible financial options, innovative financing, new concepts, ideas and technologies. There are limitations at the Departmental and Local Authority Levels as regards structuring of projects, identifying the best mode of financing, adoption of new concepts, ideas and modern technologies.

3. With the advent of digital technologies and consolidation of intellectual property rights in India, many solutions have emerged to address the complex problems faced by Infrastructure Sector. In order to strengthen the institutional mechanism required for considering use of new concepts, ideas and technologies in conceiving, developing, constructing, operating, managing and implementation of Private Partnership in the Infrastructure Sector, the concept of allowing Unsolicited Proposal has emerged as an effective solution to the Infrastructure Sectors in the modern world.

4. The concept of Unsolicited Proposal is now widely used in many countries and in some States in India for accepting Infrastructure Proposals of public need with new concepts, ideas and technologies. The concept of allowing Unsolicited Proposal known as "Swiss Challenge Method" is universally applicable.

Many States in India have adopted the modified version of Swiss Challenge Method by incorporating certain provisions in the law and policy mechanism to ensure transparency, competitiveness and proper execution of such projects, as per Hon'ble Supreme Court's guidelines in *Ravi Development V/s Shri Krishna Pratishtan and others (2009) 7 SCC 462*. Likewise, in order to explore all financial options, new concepts, ideas and technologies for development of infrastructure of public need, it is imperative to adopt method of inviting Unsolicited Proposals for Infrastructure Developments, not covered by the studies of Government Departments, Public Undertakings and Local Authorities.

5. The State of Maharashtra is one of the leading States that had embarked early upon the concept of Public Private Partnership in infrastructure projects and successfully exhibited the contribution of Public Private Partnerships in developing the State's infrastructure. The State Government recognizes the need to strengthen the institutional mechanism required for considering use of new concepts, ideas, technologies, innovative financing, know-how to meet its needs in conceiving, developing, constructing, operating, managing and implementing Public Private Partnerships in the Infrastructure Sector by encouraging the private sector participants to submit Unsolicited Proposals through a well-defined institutional mechanism. In order to ensure transparency, competitiveness, proper and timely execution of Unsolicited Proposals in the Infrastructure

Sectors, the Government considered it expedient to enact a law, so as to establish the Authority known as the Maharashtra Infrastructure Development Enabling Authority, with power to approve, advise, co-ordinate and supervise the Unsolicited Proposals in the State.

6. The salient features of the then proposed provisions are explained broadly as follows :—

- (i) to provide for establishment of the Maharashtra Infrastructure Development Enabling Authority for approval and monitoring the Unsolicited Proposals for Development of Infrastructure for public need and its powers and functions ;
- (ii) to provide for Infrastructure Projects Delivery Process ;
- (iii) to provide for condition precedence for declaration of Original Project Proponent (OPP) and rights of the Original Project Proponent ;
- (iv) to provide for publication of provisional declaration of Infrastructure Project for calling objections and public hearing ;
- (v) to provide for innovative financing ;
- (vi) to provide for invitation of competitive bids and assignment of Project ;
- (vii) to provide for nature of concessions to the Project Entrepreneur ;
- (viii) to provide for Single Window Clearance system for Infrastructure Projects ;
- (ix) to provide for appointment of Transaction Advisor for the Project ;
- (x) to provide for transparency in the functioning of the Authority, Government Authority, Government Agency and Local Authority, in implementation of the Projects under the Act.

7. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make aforesaid provisions by a law, for the purposes aforesaid, the Maharashtra Infrastructure Development Enabling Authority Ordinance, 2018 (Mah. Ord. VII of 2018), was promulgated by the Governor of Maharashtra on the 23rd February 2018.

8. The Bill is intended to replace the said Ordinance by an Act of the State Legislature.

Mumbai,

Dated the 12th March, 2018.

CHANDRAKANT (DADA) PATIL,

Minister for Public Works.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative power, namely :—

Clause 4.—(a) Under sub-clause (1), power is taken to the State Government to specify by notification in the *Official Gazette*, the composition of the Authority ;

(b) under sub-clause (2), power is taken to the State Government to prescribe by rules, the field of such other expert members to be appointed on the Authority.

Clause 5.— (a) Under sub-clause (1) (m), power is taken to the State Government to prescribe by rules, the other functions to be discharged by the Authority ;

(b) under sub-clause (3), power is taken to the State Government to prescribe by rules, the manner to delegate the functions of the Authority to the Government Department or the Government Authority, Government Agency or the Local Authority.

Clause 6.—(a) Under sub-clause (1), power is taken to the State Government to prescribe by rules, the forms and the manner to submit the documents, other details and fee of the proposal to the Authority ;

(b) under sub-clause (3) (c) and (d), power is taken to the State Government to prescribe by rules, the value of the Infrastructure Project and Infrastructure Sectors and sub-sectors, to qualify as the Infrastructure Project ;

(c) under sub-clause (4), power is taken to the State Government to prescribe by rules, the format of the Certificate to grant to the Person;

(d) under sub-clause (6), power is taken to the State Government to prescribe by rules, the period within which the Authority shall take the decision;

(e) under sub-clause (7), power is taken to the State Government to prescribe by rules, the manner to seek the further information and the period to submit the information by the Person to the Authority.

Clause 7(vi).— Under this clause, power is taken to the State Government to prescribe by rules, the other grounds to reject the proposal.

Clause 8(1).— Under this clause, power is taken to the State Government to prescribe by rules, the period within which the Authority shall ascertain as to whether the proposal submitted is an Unsolicited Proposal or not and as per the Maharashtra Infrastructure Projects Policy;

Clause 9.— (a) Under sub-clause (1), power is taken to the State Government to prescribe by rules, the manner to enter into agreement with the Original Project Proponent;

(b) under sub-clause (2), power is taken to the State Government to prescribe by rules, the nature of benefits to be granted to the Original Project Proponent.

Clause 10(1).— Under this clause, power is taken to the State Government, to prescribe by rules, the period to submit the Detailed Project Report (DPR).

Clause 11.—(a) Under sub-clause (1), power is taken to the State Government, to prescribe by rules, the manner to call the objections from the affected persons;

(b) under sub-clause (2), power is taken to the State Government, to prescribe by rules, the manner to hear the objections of the affected persons.

Clause 12(2).— Under this clause, power is taken to the State Government, to prescribe by rules, the procedure of bid, notice period technical aspects and terms and conditions for approval of the Project.

Clause 13(1).— Under this clause, power is taken to the State Government, to prescribe by rules, the eligibility criteria for submission of the proposal by the Persons under sub-section (1) of section 6 or competitive bidder for the Project.

Clause 14.— (a) Under sub-clause (2), power is taken to the State Government, to prescribe by rules, the reimbursement of the cost of the Detail Project Report to the Original Project Proponent ;

(b) under sub-clause (4), power is taken to the State Government, to prescribe by rules, the procedural details of assignment of Project to the Project Entrepreneur.

Clause 15(1).— Under this clause, power is taken to the State Government, to prescribe by rules, the Concession Agreement with the Project Entrepreneur.

Clause 16.— (a) Under sub-clause (1), power is taken to the Authority, to prescribe by regulations, the model Concession Agreement ;

(b) under sub-clause (2) (e), power is taken to the State Government to prescribe by rules, the variations and combinations of other Concession Agreements ;

(c) under sub-clause (3), power is taken to the Authority to prescribe by regulations, the details of Concession Agreements.

Clause 17(2).—Under this clause, power is taken to the State Government, to prescribe by rules, the manner in which the Government Authority or Government Agency or Local Authority report to the Authority.

Clause 18(2).—Under this clause, power is taken to the State Government, to prescribe by rules, the functions and duties of the Transaction Advisor.

Clause 19(2).—Under this clause, power is taken to the State Government, to prescribe by rules, the procedural details of Single Window Clearance.

Clause 21(3).— Under this clause, power is taken to the State Government, to prescribe by rules, the details of integrity pact.

Clause 22.— Under this clause, power is taken to the State Government, to issue notification in the *Official Gazette*, to direct that the power exercisable by the State Government (except the power to make rules under section 24) shall be exercisable by an Officer of the State Government subject to such terms as may be specified in such notification.

Clause 24.—Under this clause, power is taken to the State Government, to make rules, by notification in the *Official Gazette*, to carry out the purposes of the Act.

Clause 25.—Under this clause, power is taken to the Authority, to make regulations, by notification in the *Official Gazette*, to carry out the purposes of the Act.

Clause 27.—Under this clause, power is taken to the State Government, to issue within a period of two years from the date of commencement of this Act, an order published in the *Official Gazette*, for removal difficulties, if any, that may arise in giving effect to the provisions of the Act.

2. The above-mentioned proposals for delegation of legislative power are of normal character.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for establishment of the Maharashtra Infrastructure Development Enabling Authority. Sub-clause (2) of clause 4 provides for appointment of expert Members on the said Authority from such field as may be prescribed by rules. It would be necessary to pay the remuneration and allowances to such Members. This would require recurring expenditure to be met out from the Consolidated Fund of the State. However, it is not possible at this stage to give an estimate of actual expenditure that may have to be incurred in this behalf, as the same may be depend upon the appointment of number of such Members.

GOVERNOR'S RECOMMENDATION UNDER ARTICLE
207 OF THE CONSTITUTION OF INDIA

(Copy of Government of Maharashtra Order, Law and Judiciary Department)

In exercise of the power conferred upon him by clause (3) of Article 207 of the Constitution of India, the Governor of Maharashtra is pleased to recommend to the Maharashtra Legislative Assembly, the consideration of the Maharashtra Infrastructure Development enabling Authority Bill 2018.

Vidhan Bhavan :

Mumbai,

Dated the 14th March 2018.

DR. ANANT KALSE,

Principal Secretary,

Maharashtra Legislative Assembly.